

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**JAMES GRAY,**

Petitioner,

v.

**Civil Action No. 5:22-CV-190  
Crim. Action No. 5:20-CR-44-1  
Judge Bailey**

**USA,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

The above referenced case is before this Court upon the magistrate judge's recommendation that petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [Civ. Act. No. 5:22-CV-190, Doc. 1; Crim. Act. No. 5:20-CR-44-1, Doc. 76] be dismissed without prejudice as premature.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United***

**States v. Schronce**, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's report and recommendation.


A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation [**Civ. Act. No. 5:22-CV-190, Doc. 4; Crim. Act. No. 5:20-CR-44-1, Doc. 84**] is **ADOPTED**. Petitioner's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody [**Civ. Act. No. 5:22-CV-190, Doc. 1; Crim. Act. No. 5:20-CR-44-1, Doc. 76**] is **DISMISSED WITHOUT PREJUDICE** as premature.

Moreover, this Court **DIRECTS** the Clerk to **STRIKE** Civil Action Number 5:22-CV-190 from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** October 12, 2022.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE